

Functional Series 300
Acquisition and Assistance

INTERIM UPDATE #5

SUBJECT: Policy Notice Reissuance

NEW MATERIAL: This notice is a mandatory reference for ADS 350 on Grants for Foreign Governments and ADS 201 on Managing for Results. The first reissued Notice in this interim update concerns the Host Country 25% Contribution Requirement. The second reissued Notice in this interim update, Waiver of the Host Country Contribution Requirement for RLDCs, has been superseded by Series 300, Interim Update #8.

SEE ALSO: ADS 201, 202, and 350

EFFECTIVE DATE: September 18, 1996

POLICY

USAID/General Notice
GC & PPC
03/09/98

SUBJECT: Policy Notice Reissuance

The two attached Notices, both dated September 18, 1996, are being reissued because they were inadvertently left off of DR-CD #9. The reissued Notices concern the Host Country 25% Contribution Requirement, and Waiver of the 25% Requirement for RLDCs. They will be needed by designers of new activities by SO.

These reissued Notices are Mandatory References to ADS 350, and are also relevant to ADS 201 and 202 on design and implementation of activities by SO. We plan to include them in a later DR-CD issuance.

Point of Contact: **Jan Miller, GC/LP, 202-712-4174.** For further information about countries on the list of RLDCs, contact Mike Crosswell, PPC/ECON, 202-712-0923, mcrosswell@usaid.gov.

POLICY

USAID/General Notice
GC & PPC
Sept. 18, 1996

SUBJECT: Host Country 25% Contribution Requirement -- Application of FAA Section 110 to Obligations by Strategic Objective

This Notice is a mandatory reference for ADS 350 on Grants to Foreign Governments. It supercedes former HB 3, App 2G, parts A-D and F, and 91 State 138349 (April 27, 1991).

I. Assistance Covered By FAA 110.

A. General - DA and DFA only.

Section 110 of the FAA, Cost-Sharing and Funding Limits, states: "No assistance shall be furnished by the United States Government to a country under Sections 103 through 106 of this Act until the country provides assurance to the President, and the President is satisfied, that such country will provide at least 25 per centum of the costs of the entire program, project, or activity with respect to which such assistance is to be furnished, except that such costs borne by such country may be provided on an 'in-kind' basis."

Section 110 applies to assistance provided by the United States through the government of a country ("bilateral assistance") under Sections 103 through 106 of the FAA, Development Assistance. The host country contribution requirement also applies to bilateral assistance through host governments in Africa provided under the Development Fund for Africa (DFA). However, Section 110 does not apply as a matter of law to Disaster Assistance, Housing and other Credit Guarantee Programs, assistance from the Economic Support Fund (ESF), nor to assistance provided under the SEED Act or the Freedom Support Act in the ENI region, since these types of assistance are authorized by laws other than the FAA, or sections of the FAA other than FAA 103-106.

1. Definition of "Program, Project or Activity"

A "program," as the term is used in Section 110, is an entire sectoral effort approved under Sections 103 through 106 (DA or DFA) for a given year or for several years, that is, all activities related to achieving a Strategic Objective, approved as part of the operating unit's strategic plan, for which funds are obligated in a SOAG or other bilateral agreement. A "project" can be viewed as an aggregation of activities in a component or a results package aimed at achieving a strategic or other objective, such as a component described in Annex 1 of a SOAG. An "activity" is an individual

development intervention or any other assistance provided in furtherance of an objective, whether part of a larger component or not, for which funds are obligated in a SOAG or other bilateral agreement.

2. Cash or In-Kind Contributions Are Acceptable

The contribution of the recipient country government may cover operating and/or capital costs, including but not limited to: cash, capital goods, counterpart personnel, services and studies which support attainment of the SO, rental or purchase of materials for operations or construction, administrative costs, fair market value of land contributed by the country to attainment of the SO, and costs related to the above items. The inclusion of the words "in-kind" in Section 110 indicates the intent of Congress that contributions should be construed to reflect the total value of contributions of the recipient country government.

3. Contributions by other donors are excluded since multidonor programs, if authentically multilateral, are excluded from coverage. Contributions of other donors do not necessarily demonstrate the commitment of the host country to the "program, project or activity with respect to which such [U.S.] assistance is to be furnished," which commitment was the concern of Congress in enacting Section 110.

4. Subsequent fiscal year calculations of Section 110 contributions should exclude any activities or results packages for which life-of-SO assurances have been received in prior years. Excess contributions from one SO cannot be counted towards the contribution calculation for another SO.

5. Local currency owned by the host government ("HCOLC") may be utilized by the host country government to fulfill its obligation under FAA 110, even though USAID may retain certain joint programming rights over the funds. HCOLC may be generated under ESF cash transfers, CIPs, PL-480 Title I or III Agreements, or other bilateral agreements. In many instances it may be beneficial to both governments to utilize such HCOLC as the host country government contribution or "counterpart" to the activities financed under a SOAG. As well as fulfilling Section 110, such arrangements provide additional assurances that the LC funds will be available when needed under the SOAG, and that the HCOLC will be properly utilized for development purposes consistent with the FAA or PL-480, depending on the source of funding.

B. Treatment of Public Sector and Private Sector Activities Funded By Objective Agreements (SOAGs) or Other Bilateral Agreements

Section 110 is interpreted to apply only when the government of a country is directly benefitted or directly involved in managing the assistance which has been obligated by bilateral agreement to the host country government. The host government must contribute 25% of the total cost of any program, project or activity financed in part by USAID through a bilateral agreement with the host government (such as a SOAG, PROAG, or Limited Scope Grant Agreement), if the activities directly benefit the government, or are administered, managed, or controlled by the government.

Under a SOAG or other bilateral agreement, therefore, the 25% host government contribution requirement will apply, for example, to activities that directly finance the costs of a government ministry or agency, or to contracts to deliver goods or technical assistance to a host government ministry, since the host government is substantially involved, or directly benefits from the assistance.

This statutory requirement does not apply, however, to grants, cooperative agreements, or contracts USAID obligates directly to or with private voluntary organizations (PVOs) or other nongovernmental organizations (NGOs), which are nevertheless subject to the cost sharing policies stated in PD 16, and in the New Partnership Initiative. These kinds of activities through NGOs and PVOs are considered direct assistance in support of the programs of the NGOs and PVOs to the people of a country, rather than to its government. Furthermore, FAA 110 will not apply to components or activities that will be implemented through cooperative agreements or grants to, or contracts with, PVOs or NGOs, even though funds are initially obligated in a bilateral Strategic Objective Agreement (SOAG) or a Limited Scope Grant Agreement (LSGA) unless the activities, components, or program directly and substantially involve the host government in management or control, or directly benefit the host government. Merely signing an implementation letter or order by a host government official to earmark or approve use of funds obligated by SOAG or LSGA for private sector activities does not by itself indicate such substantial involvement of or benefit to the host government.

Examples of exempt activities could be specific support grants to PVOs, and other NGOs, including U.S., local or international institutions, for environmental or health activities, cooperative agreements with NGOs which finance credit programs through private sector banks or credit unions, or contracts with private companies to study development problems for which the direct or primary benefits do not flow to the host government, but to private individuals or organizations.

Substantial host government involvement in managing or controlling the private sector activity funded under a SOAG or LSGA, however, will again trigger the application of Section 110 to the activity. For example, if the host government retains substantial authority in the SOAG to approve the detailed terms and conditions of a private sector activity, or exercises predominant control of personnel, site selection, budget, or program content of a private sector organization and its activity, then Section 110 would apply to that activity.

The first step in applying Section 110 to the activities funded by a SOAG or LSGA, therefore, is to determine which activities are exempt from the requirement, and therefore excluded from the calculation, because they will be implemented by private sector organizations, without substantial host government involvement or benefit.

II. Method and Timing of Application of Section 110 to Obligations By SOAG.

A. General - Incremental Approach

Under the prior project system, under which all activities or components (groups of activities) were fully designed and described at the time the bilateral agreement (Project Grant Agreement, or "Proag") was signed, Section 110 was applied at the outset, at or before the first obligation of funds, to all activities for which funds were obligated in the agreement. This is still the preferred approach, if the activities are fully described in the SOAG at initial obligation.

However, because the New Management System permits more flexibility in the design of activities, so that not all (or even most) activities will have been designed and described at the time the first obligation by SOAG is made, it will not be possible in many cases to apply Section 110 at the outset to all the activities planned to be financed under the SOAG. Instead, USAID and the host government may choose to apply Section 110 to those activities (components or categories of activities) which have been adequately designed and described at the time of initial signature of the SOAG, and for which funds are obligated in the SOAG. Thereafter, as other activities are identified and more specifically described, and as incremental funds are obligated in the SOAG on an annual or more frequent basis by amendment of the bilateral agreement, Section 110 must be repeatedly applied. This process will require appropriate adjustments to the contributions of the Parties stated in Section 3.2(b) of the SOAG, and to the description of activities and budget stated in Annex 1 of the agreement.

1. The first step is to determine which activities may be treated as exempt from the FAA 110 requirement because the activities will be implemented wholly in the private sector, without substantial control by or benefit to the host government, as stated above in Section I.B. The 25% host country contribution requirement will apply to all other components and activities planned to be funded under the agreement, including activities carried out by private organizations which are not excluded. Note: Even if certain private sector activities may be excluded under the tests given in Section I.B., USAID and the host government instead may choose to include them, e.g., in order to count sizeable private sector contributions to the SO.

2. The calculation of respective contributions should be based upon the total cost of the SO program, as described in Annex 1 of the SOAG, minus any excluded components or activities. Thus, if the cost of the SO program, less exclusions, including USAID and recipient country contributions were equivalent of \$100, the recipient country would have to contribute at least the equivalent of \$25. (An equivalent formula is that the host country contribution must be 1/3 of the USAID funding, since 25% is 1/3 of 75%.) The contributions by USAID and by the recipient country must be made during the life of the program, as defined in the SOAG; i.e., normally the disbursement period of the planned USAID contribution to a Strategic Objective. The contributions of private organizations which are included in the calculation of total cost of the SO program should be counted as part of the host country contribution, along with those of the host government.

3. Once the total cost of the SO program, minus any exclusions, is calculated the total amount of the planned host country contribution must be stated in Section 3.2(b) of the SOAG, although it may be stated as being conditioned on availability of funds, mutual agreement, and on USAID fully obligating its total planned contribution, which is stated conditionally in Section 3.1(b) as subject to the availability of funds and mutual agreement to proceed. Funds for a multi-year SO will usually be obligated by USAID in annual increments, by amendment of Section 3.1(a) of the SOAG. In this case, a lesser incremental host country contribution must also be stated in Section 3.2(b) without such conditions, proportionate to the amount incrementally obligated by USAID in Section 3.1(a). See Sections 3.1 and 3.2 of the model SOAG in ADS 350.

Thus, the treatment of the host country contribution in Section 3.2(b) and in Annex 1 will be parallel to the treatment of USAID's contribution in Section 3.1(a) and (b), and in Annex 1. At the time of initial or each incremental obligation of funds by USUSAID in Section 3.1(a), the Agreement must contain (usually in Annex 1) either a detailed description of the activities to be financed by the appropriated funds obligated in that increment, or a general description of the activities, and objective criteria and procedures for later selection of actual activities. At this point, the Agreement should also contain (usually in Annex 1) a brief description of the categories of cash or in-kind contributions which will be provided by the host country, with a brief budget, stating a total "unconditional" host contribution in Section 3.2(b) equal to one-third of the "unconditional" USAID contribution in Section 3.1(a). This process must be repeated each time the SOAG is amended, or until all activities and all categories of host country contribution are fully described and quantified.

4. Exchange rates. The exchange rate to be used in valuing host country contributions is the rate in effect at the time the contribution is described and quantified in the Agreement. If all USAID-funded activities, and all categories of host country contribution, are fully described at the time of initial obligation, then the exchange rate prevailing at that time may be applied throughout. If not, that rate will apply only to such contributions as are there initially described and quantified. A new exchange rate must be applied for contributions adequately described at the time of each incremental amendment.

Thus, for each incremental amendment of the SOAG, appropriate host country contributions must be identified. e.g. salaries for relevant ministry, operating expenses for the activity, construction materials, labor, etc. Next, the value of in-kind contributions should be estimated at fair market value in the host country at the time the estimation is made, and converted to dollars for budgetary purposes at the highest legal exchange rate (in terms of local currency required to purchase \$1) as of the time the agreement or relevant amendment is signed. Cash contributions in local currency are valued in the same way, converted to dollars, at the time the contribution is identified and described, at the "highest legal rate" of exchange as stated in USAID's Exchange Rate Policy Guidance. Once the host country government contribution has been calculated in local currency and converted to a dollar equivalent for a particular activity or component, and

an adequate assurance of that contribution has been received in the SOAG, future changes in the exchange rate are disregarded for that activity or component.

III. Host Government Assurances and Compliance

A. Written Assurances of the Host Country Government Contribution.

FAA Section 110 requires that before Development Assistance (or DFA) is furnished, the host country (through its government) must provide "assurances" satisfactory to the USG that the country will contribute 25% of the activity, project or program. USAID requires that the assurance be provided in writing before or at the obligation of funds, for the component or activity to which it relates. USAID must determine the written assurance of the 25% contribution to be satisfactory before or at the time funds are obligated for an activity. Thus, the host government contribution must be briefly described and quantified (cash or in-kind contribution valued at market rate in local currency or dollars at the applicable exchange rate) in the written assurance.

1. The host government may furnish these assurances in writing prior to initial obligation in a SOAG or other bilateral agreement. In many cases, however, this will not be possible because the activities will not yet have been sufficiently identified or described. Therefore, the requisite written assurance may be made simultaneously with (or as part of) the execution of the SOAG or other bilateral grant agreement (such as an LSGA). Thus, host government assurances regarding contributions may be made by separate written letter prior to signing the SOAG, or as part of the SOAG, in section 3.2(b) and Annex 1. The host government official signing the SOAG or providing other written assurance should have sufficient authority to commit the host country's resources, e.g. the Minister of Finance or Planning. Under ADS Part 103.5.8b para 2e, if such authority has been delegated to them by the regional bureau AA, (as it has in most cases, per ADS 103.5.11, -.12, and -.14), principal USAID officers in the field have the authority and the responsibility to receive and determine the adequacy of assurances of host country contributions, whether such assurances are made before or when the SOAG is signed. Documentation of the operating unit should show that the USAID official to whom such activity has been delegated under ADS 103 received a satisfactory assurance or assurances from the recipient country government that it will make the required contribution. A signed SOAG or SOAG amendment which includes the elements described in Part II above is an adequate assurance.

2. Successive assurances with respect to individual activities or components, in amendments to the SOAG obligating incremental funding, will be needed unless a blanket assurance covering the ratio of contributions for all activities planned to be achieved through the SOAG is received at the outset. If activities are identified incrementally, such as on an annual basis, then the host country government contribution for the activities may be identified, described and calculated on a similar

periodic, incremental basis, so long as the host country government also makes the general promise in Section 3.2(b) of the SOAG to contribute 25% of the cost of all activities to be identified in the future, to which Section 110 applies. In using this incremental approach, the alternate formulation of Section 3.2(b) should be used in the SOAG, which states both an unconditional promise to make the contribution for activities identified and funded, and also the general, conditional promise to make the contribution for all non-excluded activities, subject to USAID making its full contribution in Section 3.1(a). Each periodic amendment of the SOAG should identify, calculate and describe the host country government contribution to the activities for which incremental funding is provided by the amendment. See Part II above and ADS 350.

B. Bureau and Mission Procedures to Ensure Compliance with FAA 110.

1. Bureau Tracking System.

Geographic Bureau DP offices should establish a bookkeeping system designed to furnish an answer for any given country in the Bureau on: i) the total amount of recipient country contributions for which assurances have been received so far in the current fiscal year, the amount of USAID assistance related to these assurances; and ii) the amount of USAID assistance to SO programs, components and activities for which a waiver or recipient country contribution has been approved and the related amount of recipient country contribution, if any.

2. Monitoring and Country Contributions.

a. USAID field Missions should establish systems to receive reports on host government financial contributions to USAID-financed development efforts and to record such information in the official files of the Mission. Mission procedures should specify the offices responsible for maintaining the Mission official records, such as contribution performance reports, activity manager's certification of compliance with contribution requirements, and related accounting records and correspondence.

b. Missions should include in agreements or PILs a requirement for host governments to report at least annually (more frequently if appropriate) on their contribution (cash and in-kind) to the USAID financed SO/component/activity.

c. The adequacy of the host government contribution should be periodically reviewed and the reliability of the reports tested on at least a "spot-check" basis by periodic Mission site visits, reviews or evaluations. If host government centralized systems are not maintained, as a minimum, the activity manager should obtain the host government "cost sharing" report and, after signing the report indicating the report's reasonableness in relation to the activity, staffing progress, etc., file the report in the official Mission files. In cases in which the agreement calls for a contribution in excess of or less than 25%, the Mission also must ensure that the agreed

total host government contribution is provided so that SO objectives are met. Regarding waiver of the host country contribution requirement for relatively least developed countries, see the reference to ADS 350 on "Waiver of the Host Country Contribution Requirement for Relatively Least Developed Countries."

Point of Contact: For further information about this notice contact Steve Allen, GC/LAC, (202) 712-5818, stallen@usaid.gov.

POLICY

USAID/General Notice
GC & PPC
Sept. 18, 1996

SUBJECT: Waiver of the Host Country Contribution Requirement for Relatively Least Developed Countries

SUPERSEDED: This notice was superseded by Series 300 Interim Update #12, Waiver of the Host Country Contribution Requirement for Relatively Least Developed Countries, dated February 4, 1999.

drcd11 (revised ads14 and ads17)